ADR | Partnership
Partners in Alternative Dispute Resolution

Digest

Issue 15 | Spring 2012

In this issue:

Welcome

In this edition of the *ADR Digest*, Kaymond Lam, a senior consultant with ADR reviews whether the costs of claim preparation are recoverable and on what basis. Kaymond concludes that the perception that a contractor is not entitled to the reimbursement of the cost of preparing claim submissions under a contract is misplaced.

We are pleased to have Ian Cocking, Partner and Head of Construction of Clyde & Co and his colleague Tom Palmer, Counsel of Clyde & Co as our guest writers. Ian and Tom review the new Arbitration Ordinance which may have some unintended consequences and even some unpleasant surprises for those involved in construction disputes.

Finally, it is always nice to receive constructive feedback to the *ADR Digest* and in this edition we include Peter Berry's 'two-penneth' worth' on concurrent delay, responding to Patrick O'Neill's article *"Concurrent Delay: Which Way Now"* (*ADR Digest* 2011, Issue 14).

James B Longbottom
Managing Director

Claim Preparation Costs: Are They Recoverable?

By **Kaymond H C Lam**
BEng (Hons) LLB (Hons) MA (ArbDR)
MSc DIC MHKIE MICE CEng FHKIArb PCLL
Senior Consultant, ADR Partnership Limited

Introduction

Claims for extensions of time and additional payment are commonplace in the construction industry. When such situations occur, contractors may often employ claim consultants to prepare submissions to present to the architect or engineer. However, a question which often arises is whether the claim preparation costs associated with employing these consultants are recoverable and, if so, on what basis? The purpose of this article is to discuss the general perception of the answer to this question and review the circumstances in which the cost of preparing claims may be recoverable.

General Perception

The most commonly used standard forms of contract in Hong Kong are the *Hong Kong Government General Conditions of Contract* (1999), *MTRC Conditions of Contract for Civil Engineering and Building Works Construction* (1998) and *Standard Form of Building Contract* (2005). The relevant provisions associated with the submission of particulars for extensions of time and additional payment within these standard forms of contract are summarized in **Figure 1** *(see page 2)*.

It can be seen from these that the contractor has a contractual obligation to submit particulars to the architect or engineer. In this regard, one perceived view is that the cost of preparing claim particulars is not recoverable, as the contractor is merely complying with the requirements expressed in the contract.[1]

Contract Type	Extensions of Time	Additional Payment
Hong Kong Government General Conditions of Contract (1999)	Clause 50(3) provides that: *"... Where such full and detailed particulars are required by the Engineer, they shall be submitted in writing by the Contractor to the Engineer ..."*	Clause 64(4) provides that: *"... the Contractor shall, as soon as is reasonable, send to the Engineer a first interim account giving full and detailed particulars of the circumstances giving rise to the claim ..."*
MTRC Conditions of Contract for Civil Engineering and Building Works Construction (1998)	Clause 68.3 provides that: *"The Contractor shall within 28 days after the cause of any delay has arisen or as soon as thereafter as is reasonable in all the circumstances deliver to the Engineer full and detailed particulars of any claim for an extension of time he wishes to make in respect of such delay."*	Clause 82.3 provides that: *"... the Contractor shall as soon as is reasonable in all the circumstances send to the Engineer a first interim account giving full and detailed particulars of the amount claimed to that date and of the grounds upon which the claim is based ..."*
Standard Form of Building Contract (2005)	Clause 23(1) provides that: *"... The Main Contractor shall, if practicable in such notice or otherwise in writing as soon as possible after such notice, give particulars of the expected effects of the delay, or potential delay, and shall estimate the extent, if any, of the expected delay to the completion of the Works ..."*	Clause 24(1) provides that: *"Each written application by the Main Contractor shall include a fully detailed and substantiated claim to show the build-up of such loss and/or expense claimed by the Main Contractor ..."*

Figure 1: *Commonly used Provisions for the Submission of Particulars for Extensions of Time and Additional Payment in Hong Kong*

Notwithstanding this view, the contract does not expressly prohibit the contractor from recovering the additional cost of preparing claim particulars. In the following article, the author identifies three situations where the cost of preparing claims may be recoverable.

...one perceived view is that the cost of preparing claim particulars is not recoverable as the contractor is merely complying with the requirements expressed in the contract.

Contractual Claim

A first situation is that, as a result of the architect's or engineer's instigated changes, late provision of information and the like, the contractor has to employ additional resources to manage the effects of the changes and requests for outstanding information. The costs of the additional resources will usually be included in the general claim for prolongation or staff thickening.

The architect or engineer has a duty to issue comprehensive drawings to the contractor in good time in order for the contractor to procure plant and materials, review construction details, prepare method statements and carry out coordination and planning before the work is executed on site. In particular, if the contract is lump sum, this indicates the design is developed and good for construction and that there is limited necessity for post-contract additional information or changes. Where there are changes to the design resulting in Cost being incurred by the contractor, then the architect or engineer shall ascertain and decide the additional payment in accordance with the Contract.[2] When the architect's or engineer's instigated changes require commercial resources to deal with them and the quantum of variations and extra works can no longer be dealt with by the tendered resources, the commercial resources have to be increased accordingly. It is submitted that the additional cost of such increases, including engagement of claim consultants to assist in claims preparations, should form part of the valuation of variations or claim for the reimbursement of Cost.[3]

Common Law Claim

A second situation is where there has been a breach of contract resulting in a claim for damages under the first limb of *Hadley v Baxendale*[4]; i.e. loss and expense which arises naturally and in the ordinary course of things. The breach will usually be related to an express term of the contract which places on one party an obligation to the other. For example, there is a default on the part of the architect or the engineer in handling the contractor's claim.

Provided that the contractor has given particulars in accordance with the contract, the architect or engineer has a contractual duty to ascertain and certify the sum due arising out of a claim.[5] If the architect or engineer does not assess and decide the sum which is due, this constitutes a breach of contract and results in an actionable claim for damages by the contractor for the further sums due as a result of the architect or engineer not fulfilling this obligation.

In *Croudace v London Borough of Lambeth*[6], the court held that the architect's failure to ascertain the contractor's claim for loss and expense amounted to a breach of contract if the architect acted as the agent of the employer in certifying and the contractor could establish that he had suffered damages as a consequence of the breach.

If, despite all requests for a reasonable assessment of the claim, the architect or engineer makes no assessment within a

reasonable time or the assessment is inadequate or erroneous, the contractor should be justified in employing additional staff or a consultant to prepare the claim submissions and such costs should be reimbursable.

Alternatively, the breach may also be related to a term implied into the contract to give it business efficacy. For example, the architect or engineer, as the employer's agent, has an implied obligation not to hinder or prevent the contractor from carrying out the contractor's obligations. The contractor can make an actionable claim of damages against the Employer if he fails to do so. The position is summed up in *Hudson's Building and Engineering Contracts* (11th Edition paragraph 4.180) where the author states:

> "*Late delivery by the owner or his A/E of drawings or necessary information properly required by the contractor to enable him to carry out his works is, at the present day, rightly taken for granted as a breach of contract by the Owner. Depending on the relative importance of the work in question and after reasonable notice, it may also constitute a repudiation justifying rescission of contract.*"

There are precedents for the payment of managerial costs as a consequence of a party's breach of a contractual obligation. For example:

i) In *Tate & Lyle Distribution Ltd. v Great London Council*[7], Forbes J stated that the expenditure of managerial time in remedying an actionable wrong done to a trading concern can be claimed as special damages. In *Amec Building Ltd v Cadmus Investments Co Ltd*[8], Mr. Recorder Kalipetis QC applied this decision to a claim arising out of delay to a construction project.

ii) In *Standard Chartered Bank v Pakistan National Shipping Corporation*[9], Potter LJ stated that building contractors who, by reason of delay, suffer increased costs attributable to a particular job which costs are irrecoverable elsewhere, may claim for a proportion of their fixed overheads, (including head office salaries) as part of their claim for consequential loss.

iii) In *Unisys Australia Ltd v RACV Insurance Pty Ltd*[10], Phillips J stated that the cost of employing additional staff to cover the absence from their regular duties of the permanent staff can be recovered because had there been no misconduct those additional staff would not have been needed.

iv) In *Sural SpA v Downer EDI Rail Pty Ltd*[11], Einstein J stated that the delay experienced in rectifying problems with conductors meant that the employees were required to spend additional time fixing and coping with the problems and hence additional moneys were required to be paid by the employer being moneys that would not have been paid had the job not taken so much longer than estimated.

The above judgments may equally be applicable to the recovering of claim preparation costs following a breach of contract.

Legal Proceedings

A third situation is that the purpose of preparing claims' particulars are related to the conduct of legal proceedings. The author of *Keating on Construction Contracts* (Ninth Edition, pg. 324) states:

> "*... the cost of expert reports and the like are recoverable as damages if their main purpose was to help the plaintiff deal with the defendant's breach of contract, but (if at all) as costs in the proceedings ...*"

In *NAP Anglia Limited v Sun-Land Development Co Limited*[12], Mr. Justice Edwards-Stuart held that sums paid to a third party (i.e. a claim consultant) solely for the purpose of assisting with a claim or defense may be recoverable in principle provided that the third party was not doing any acts that only a solicitor can do and/or does not do an act whilst purporting to act as a solicitor. It did not matter that such work was of a type commonly done by solicitors but to be recoverable such costs had to be reasonably incurred and reasonable in amount. The rationale behind this decision is that rather than have the claimant's solicitors undertake the task of searching through documents to seek out relevant information, it was more appropriate and cost effective to utilize the claim consultant's knowledge of the dispute to provide the facts and evidence required by the claimant's solicitor to produce the documents for enforcement and rebuttal of the defendant's arguments. This decision, though not binding on Hong Kong courts, may be regarded as persuasive authority in Hong Kong with respect to the recovery of the cost of preparing claims by claim consultants.

Section 62 of Arbitration Ordinance (Cap 609) gives an arbitrator discretion to direct by whom and to whom the costs of arbitration proceedings shall be paid. Following the above decision, if the cost of preparing claim submission was done in connection with preparing a case for arbitration and the costs incurred are reasonable, an arbitrator may include them in his award of costs.

Conclusions

In summary, the perception that a contractor is not entitled to the reimbursement of the cost of preparing claim submissions under the contract is misplaced. If the contract was construed in such a way, the contractor's financial losses arising from the expense in preparing claims particulars would increase in direct proportion to the increased number of claims caused by compensable events. It submitted that such an interpretation or construction of contract is contrary to natural business sense. It is only fair and equitable for the contractor to be recompensed for such costs in the circumstances where the costs form part of the contractual claim itself, there is a breach of contract resulting in a claim in damages, or the claim document was prepared in connection with legal proceedings.

For further information contact:
kaymond.lam@adrpartnership.com

Footnotes:

1. *150 Contractual Problems and Their Solutions*, Roger Knowles, Blackwell Publishing (2005), pg. 270
2. Clause 61 of *Hong Kong Government General Conditions of Contract* (1999), Clause 80 of *MTRC Conditions of Contract for Civil Engineering and Building Works Construction* (1998) and Clause 7 of *Standard Form of Building Contract* (2005)
3. Clause 63(a) of *Hong Kong Government General Conditions of Contract* (1999), Clause 7 of *MTRC Conditions of Contract for Civil Engineering and Building Works Construction* (1998) and Clause 24 of *Standard Form of Building Contract* (2005)
4. (1854) 9 Ex. 341
5. Clauses 48(2), 54(2) and 63 of *Hong Kong Government General Conditions of Contract* (1999), Clauses 38.3 and 82.4 of *MTRC Conditions of Contract for Civil Engineering and Building Works Construction* (1998) and Clauses 11(6) and 24(1) of *Standard Form of Building Contract* (2005)
6. (1986) 33 B.L.R. 20, CA
7. (1982) 1 W.L.R. 149
8. (1996) 51 ConLR 105
9. (2001) EWCA Civ 55
10. (2004) VSCA 81
11. (2007) NSWSC 1234
12. (2012) EWHC 51 (TCC)

The New Arbitration Ordinance (Cap 609) from a Construction Industry Perspective

By **Ian Cocking** *(above left)*
Partner & Head of Construction for Hong Kong & China
and **Tom Palmer** *(above right)*
Counsel, both of Clyde & Co

Introduction

The introduction of the new Arbitration Ordinance (the "New Ordinance") may have some unintended consequences and even some unpleasant surprises for those involved in construction arbitrations.

By and large the vast majority of construction arbitrations were (and still are) what used to be described as "domestic" arbitrations, i.e. between Hong Kong parties relating to Hong Kong projects. Indeed construction arbitrations account for a significant proportion of the total number of arbitrations, and certainly some of the largest and longest cases. The construction industry is still therefore a major user of arbitration services.

This domestic demand was reflected in the old Arbitration Ordinance (Cap 341) (the "Old Ordinance") which was broadly divided into 2 parts, the "domestic" and "international" regimes. The domestic regime has become very familiar territory to everyone involved in construction disputes and largely catered to our needs. However, in response to calls from the international arbitration lobby for a single "unitary" regime covering all arbitrations, the law has now been changed to effectively make them all subject to the same rules as for international arbitrations.

However, this was not the end of the story. In the face of strenuous campaigning by the construction industry, the proposed legislation was amended to include "Schedule 2", which attempts to re-incorporate a scheme which is very similar to the old domestic regime by virtue of what is commonly described as an "automatic opt-in" for the next 6 years. So, whilst there is supposed to be a unitary regime, this is not, in fact, the case. Since there are big differences between Schedule 2 and the new arbitration law, careful attention will need to be paid to all arbitration clauses to ensure that they do invoke Schedule 2.

Despite the fact that much has been written about the New Ordinance in general, some of the practical implications are only just coming to light from a construction industry perspective. This article will briefly look at some of the main reasons why it is important to opt in to Schedule 2 and the key differences between Schedule 2 and the rules that would otherwise apply under the new regime. It will then go on to look at the mechanics of opting in. It will quickly become apparent that there are a number of potential pitfalls, and that far from having simplified the position, the New Ordinance has introduced a new level of complication.

Some readers may find that they have not opted-in when they thought they had. This is because not all standard forms in use will automatically do so, and require amendment.

Some readers will find that they have unwittingly opted-in, or do not know one way or the other. This is because they are sub-contractors and their position will depend upon the head contract, which they may never have seen.

As a result of reading this article you may feel that a review of your contracts and sub-contracts is warranted to ensure that you have opted-in. Of course, as arbitration faces increased competition from the Construction and Technology Court, which comes free, is fairly speedy, and includes rights of appeal, some readers may conclude that arbitration is not the best option for every contract.

Background

On 1 June 2011, the New Ordinance came into force in Hong Kong. Broadly speaking, the objectives of its drafters were twofold. First, to replace the Old Ordinance with a user friendly piece of legislation with more solid foundations in the UNCITRAL Model Law. Secondly, in achieving the first aim, they hoped to make Hong Kong a more attractive venue to arbitrate international disputes in the region – an increasingly competitive market.

To achieve these dual objectives, the distinct regimes for domestic and international arbitration present in the Old Ordinance were discarded in favour of a unitary regime. As a result, the New Ordinance adopts the large majority of the provisions of the UNICITRAL Model Law verbatim, with supplemental provisions added where necessary.

The Old Ordinance – Don't Throw It Away Just Yet

The first important point to note is that the Old Ordinance will continue to govern arbitrations commenced prior to 1 June 2011. Consequently, if you have served or received a notice of arbitration prior to this date, the Old Ordinance will apply to those arbitrations and any related proceedings. Surprisingly, copies of the Old Ordinance are proving increasingly hard to come by. It has already been deleted from the public database of Hong Kong legislation. So on a practical note, do not throw your copy away just yet!

The Key Differences When Schedule 2 Does Not Apply

In summary, the main reasons why it is important to opt in to Schedule 2 (the "Opt-In Provisions") are as follows:

i) Any dispute arising between the parties to an arbitration agreement to which the Opt-In Provisions apply, will be submitted to a sole arbitrator. If the Opt-In Provisions do not apply, in default of agreement between the parties, the HKIAC will decide whether one or a panel of three arbitrators should be appointed. Should HKIAC decide the latter, the increased time and costs of having three arbitrators could be a considerable disadvantage in a situation where the parties to an arbitration are not equally matched in financial terms, or the arbitration may cease to be commercially viable.

ii) The parties to an arbitration will not be able to apply to the Courts to have related arbitrations consolidated unless the Opt-In Provisions apply. The ability to have related arbitrations consolidated may be an important option to a party looking to avoid the time and cost consequences of fighting on multiple fronts as claims are passed up and down the chain between owners, contractors and sub-contractors. An inability to consolidate will also increase the likelihood of inconsistent decisions being reached in related but separate arbitrations.

iii) The right to challenge an arbitration award on a point of law or to ask the Courts to determine a preliminary point of law will also be lost when the Opt-In Provisions do not apply. Although it is true that parties to arbitrations do not want their disputes re-tried in Court or subject to endless appeals, it is also the case that arbitration should provide the parties with a decision which, whilst it may not please them, will at least be based on the correct application of the law. Hong Kong parties are generally comfortable with the role of the Courts in arbitration in Hong Kong.

A feature of the Opt-In Provisions which does not have a direct counterpart in the Old Ordinance is Section 4, which sets out a list of nine procedural grounds on which an award can be challenged for serious irregularity. Although we have yet to see how the Courts will interpret this Section, it certainly appears to provide sufficient scope for challenging awards that may warrant being set aside.

When Will the New Ordinance and the Opt-In Provisions Apply?

The parties can expressly provide for the Opt-In Provisions (or some of them) to apply in their arbitration agreement by virtue of Section 99 of the New Ordinance. Similarly, parties can "opt-out" of the Opt-In Provisions by virtue of Section 102.

"Automatic" Opt-In

Section 100 of the New Ordinance provides that the Opt-In Provisions will apply with respect to arbitration agreements entered into before 1 June 2011 and at any time before 31 May 2017, **provided that** the arbitration under the agreement is a **domestic** arbitration. As to whether an arbitration will be considered domestic, the test adopted under the Old Ordinance no longer applies and some form of express wording providing for domestic arbitration in the arbitration agreement is now required.

A review of some of the more widely used standard form contracts in Hong Kong reveals that not all of them expressly provide for domestic arbitration, and that the Opt-In Provisions will not therefore apply automatically.

Take for example, the arbitration agreements present in the HKIA standard form of *Building Contract and Sub-Contract* (1986 Edition), arguably still the most popular form of contract with private developers in Hong Kong. Neither provides for domestic arbitration. The same can be said for the 1993 Editions of the Government forms of *Contract for Building and Civil Engineering Works*. As such, the Opt-In Provisions will not be applicable to arbitrations commenced under these forms of contract.

The Opt-In Provisions will apply to arbitrations commenced under the HKIA standard form of *Building Contract and Sub-Contract* (2005 Edition) and the 1999 Editions of the Government form of *Contract for Building and Civil Engineering Works* as all provide expressly for domestic arbitration.

> ... there are a number of potential pitfalls, and that far from having simplified the position, the New Ordinance has introduced a new level of complication.

Existing Contracts

It follows that you may have contracts that were made before the New Ordinance was introduced which do not refer to domestic arbitration. Consequently, the Opt-In Provisions will not apply to arbitrations commenced under these contracts, even though these may have been domestic under the old regime. It seems unfair that parties will be deprived of the benefit of the Opt-In Provisions in these circumstances, especially when you consider they were available to the parties at the time the contract was entered into.

Construction Sub-Contracts

Section 101 applies exclusively to the construction industry and was included in the New Ordinance so as not to disadvantage sub-contractors.

By virtue of Section 101, the Opt-In Provisions will be deemed to apply with respect to arbitrations commenced under a sub-contract where the main contract (or sub-contract) under which it was granted satisfies the conditions laid down in Section 100 (i.e. it provides for domestic arbitration). This deeming provision will not however apply to sub-contracts where the sub-contractor or a substantial part of the works being sub-contracted has no connection with Hong Kong.

Section 101 is contrary to the general principal that parties should be free to choose how to resolve disputes between them. Consequently, sub-contractors must now not only review the contract in front of them, but must also be wary of what lurks in the contracts between the parties above them.

continues over

As a result of Sections 99-102 it is not difficult to envisage a situation where a single project has multiple arbitration regimes governing the resolution of disputes arising with respect to it.

If one of the intentions behind the Opt-In Provisions was (up until 31 May 2017 at least) to preserve for arbitrations involving domestic entities, a very similar regime to the Old Ordinance, it does raise questions as to why the old test for domestic arbitration was not maintained in some form. Under the Old Ordinance there was a simple test to differentiate between domestic and international arbitrations based on the parties and the place where the contract was performed.

After 31 May 2017

From 1 June 2017, it will not be enough to simply refer to domestic arbitration in your contracts in order to invoke the Opt-In Provisions. Instead, you will have to expressly incorporate the Opt-In Provisions under Section 99. If after reading this article you are one of those who need to amend your contracts, you may want to consider expressly incorporating the Opt-In Provisions now to save yourself another round of amendments in a few years time.

Payments Into Court

By virtue of an amendment to the Rules of the High Court, another key change effecting all arbitrations in Hong Kong is the abolition of payments into Court in support of arbitration proceedings. As most readers will be aware, these payments were used by Respondents involved in arbitrations to support settlement offers. This was a valuable means of forcing early settlement and determining liabilities to pay costs. Although a party will still be able to make a written settlement offer in the course of an arbitration, it is doubtful that this process will achieve the same level of certainty as to who has to pay what costs.

Conclusions

The preservation of certain elements of the old "domestic" regime by way of the Opt-In Provisions is undoubtedly a good thing. However, the mechanism chosen to incorporate those provisions is likely to lead to problems. We understand the Government is undertaking a harmonisation of its general conditions to ensure the Opt-In Provisions will apply to all arbitrations to which it is party. However, the same cannot be said for all the developers, contractors and major sub-contractors working in Hong Kong.

If the administrative burden of ensuring parties get what they want from the New Ordinance proves to be too great, this may provide parties with another reason to look more favourably at the court system for dispute resolution. With the CJR improving efficiency, court rooms and judges coming for free, and useful tools, such as the plaintiff backed offer at a party's disposal, the litigation business in Hong Kong may just have received an unexpected boost.

For further information contact:
ian.cocking@clydeco.com
or tom.palmer@clydeco.com

ADR | Feedback

My Two-Penneth' Worth on Concurrent Delay

By **Peter Berry**
Prior to retirement Peter was the Principal Assistant Secretary in the Hong Kong Government's Work Branch (now Bureau)

Dear Patrick,

To paraphrase the words of the song, I think they are getting it. Your very helpful run through of this fraught topic (*Concurrent Delay: Which Way Now – ADR Digest 2011*, Issue 14) indicates that our common law judges are starting to "mix" the essential (I submit) legal niceties of cause and effect with common sense (I love those words, particularly when emanating from a judge). Subject to reasonable proof of a direct connection between an event for which the employer is liable, or a delay by the contractor, we seem to be heading, at least in England, towards a common sense compromise.

I suggest that apportionment was not going to fly. It fails the test of cause and effect as it can reward (at least) one party with something to which they may not be logically entitled.

Prevention also has a logic problem. The (non-existent) wall referred to by Hamden J is a good example. I used to explain it by referring to an injured worker, off work for several weeks and during the recovery period, catches flu which, except for the injury, would have forced time off work. This would not affect any payment of compensation for the injury.

Where I think this is going is along the lines (allegedly) taken by the arbitrator in the Manchester Airport dispute. Both parties delayed completion; the employer could not supply in time some of the landing equipment and the runway was not ready for it anyway. We are told the arbitrator (I most respectfully submit) did the sensible thing by awarding the contractor an extension of time for the employer's delay because the airport could not open without the equipment, thereby absolving the contractor of LD's, but awarded no additional cost because of the contactor's delay, presumably because neither party should benefit from its own default. The remaining doubt is which takes precedence, the law or common sense? I would like to believe, measure the issue by the former and then apply the latter, with or without a computer.

Regards,

Peter Berry

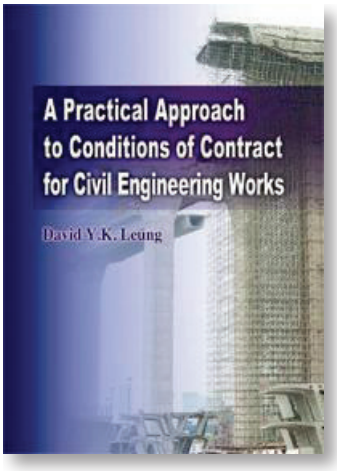
PS – I'm pleased that Hamden J chose to ignore the Protocol. I have always believed its awarding of the (contractor's) float to the employer a travesty.

For further information contact:
pjberryoap@netvigator.com

ADR | Review

Books:
A Practical Approach to Conditions of Contract for Civil Engineering Works

by David Y K Leung



This interesting book provides a comprehensive commentary and guidance to readers on the current edition (1999 Edition) of *General Conditions of Contract for Civil Engineering Works* (the "General Conditions"), which the Government of the HKSAR uses for all its civil engineering contracts. The book describes 46 out of 90 clauses in the General Conditions and their practical application with explanations in plain and simple language under such headings as *Commentary*, *Analysis* and *Application*. The book also includes questions with suggested answers to contractual problems concerning the General Conditions.

The author, David Y K Leung, was a contract advisor for Highways Department and the book thus provides a useful insight into Government's (or at least the author's) thinking on some problematic issues.

Further information:
Publisher: Hong Kong University Press, 2010
ISBN: 978-962-209-178-8
Price: HK$490

ADR | News

New Consultants Join ADR

We are pleased to announce that two new consultants have joined the ADR team.

Raymond, Ling Fung Chiu
MHKIE, MICE, CEng, BASc
Senior Consultant

Raymond L F Chui has joined ADR as a senior consultant. Raymond is a Chartered Civil Engineer with a solid background in the design and construction management of TBM tunnelling works, civil engineering infrastructure and utilities, building and ABWF works. Raymond has particular expertise on tunnelling related issues and the preparation of particulars for extensions of time and additional payment arising out of adverse ground conditions.

Ben T Chan
BEng, LLB, PCLL, CEng, MICE
Consultant

Ben T C Chan has joined ADR as consultant. Ben is a Chartered Civil Engineer and a holder of Bachelor of Law and Postgraduate Certificate in Laws. His first degree is in Civil Engineering with law. Ben has extensive practical experience in all aspects of construction management and the legal profession having assisted solicitors and legal counsel as a trainee assistant.

Society of Construction Law Hong Kong Essay Prize 2011

Congratulations to ADR senior consultant **Kaymond H C Lam** who was awarded second place in the SCLHK Essay Prize 2011 for his paper titled *"Geotechnical Baseline Report – A Solution to Achieve a More Equitable Risk Sharing Mechanism for Unforeseen Ground Conditions or a Fertile Ground for Dispute?"*

Kaymond H C Lam
BEng(Hons), LLB(Hons), MA(ArbDR), MSc, DIC, MHKIE, MICE, CEng, FHKIArb, PCLL
Senior Consultant

Kaymond is a qualified geological engineer who has carried out a number of tender commercial reviews of GBRs and has also prepared GBR tunnelling claims.

ADR | News

Organ Donation in the 'Nick of Time'

Many of you may be aware of the recent illness of Benny Chi Yan Lee who is a Commercial Manager with Maeda Corporation. Well there is good news and some thought provoking reality.

We are very pleased to advise that Benny, who had been given only weeks to live, received a deceased liver donor transplant on 2 February 2012. After a relatively short period in hospital of around 3 weeks, Benny is now convalescing at home and making great headway towards a full recovery and a normal life. Benny and his family would like to express their sincere thanks for all the messages of support that they have received and in particular to the deceased donor's family.

Many patients in need of a transplant are not as lucky as Benny. The demand for organs significantly surpasses the number of donors everywhere in the world. At the end of last year, there were 91,000 registered donors on the Hong Kong Centralised Organ Donation Register. By our reckoning that's a paltry 0.01% of the population! By comparison, in the UK the figures stand at around 29% of the population.

As of 2011, 109 patients were on the liver transplant waiting list. Of the 74 liver transplants, 30 involved deceased donors and 44 were living. The position with respect to kidney transplantation is far worse with 1,781 patients on the kidney waiting list in 2011 but with only 67 kidney transplants in that same year (59 deceased and 8 living).

Please kindly take action now and register on the organ donation register at:
http://www.organdonation.gov.hk/eng/home.html

Benny Chi Yan Lee *pictured with his family*

Graham Archer 1961 – 2012

It is with great sadness that Graham Archer, Senior Commercial Manager with Leighton Contractors (Asia) Ltd. died suddenly on Monday 9 January 2012 aged 51. Graham leaves behind his devoted wife Dina, daughter Louise and son Robert.

Graham Archer *(left), pictured with ADR's David Steed*

Graham was a well-known and extremely well-liked member of the construction industry and ADR had worked closely with him on many projects. Known for his sociability he moved in a variety of circles and was an active member of the Kowloon Cricket Club, a masonic lodge member, a keen sailor and football player. He will be deeply missed by his family, friends and colleagues.

ADR | Diary

Forthcoming Events 2012

13 Apr	*Lighthouse Club: Get Together – Insiders, Wanchai*
19 Apr	*Society of Construction Law: Construction Disputes: to Litigate or Arbitrate, James Niehorster and Jeevan Hingorani*
24 Apr	*Hong Kong Institute of Surveyors: NEC - Lessons from Nearly 20 Years in the UK and Elsewhere: Implications for Hong Kong, Richard Patterson – Surveyors Learning Centre*
27 Apr	*Tunnelling Society: DSD's Hong Kong West Drainage Tunnel – Mariners Club, TST*
30 Apr	*Chartered Institute of Arbitrators: East Asia Branch Annual General Meeting*
4 May	*RICS: Hong Kong Annual Conference 2012 - Building Towards 2021: Vision for Hong Kong as a World City – Hong Kong Convention & Exhibition Centre, Wanchai*
4 May	*Lighthouse Club: Get Together – Insiders, Wanchai*
12 May	*Lighthouse Club: Annual Ball – Hong Kong Convention & Exhibition Centre, Wanchai*
25 May	*Tunnelling Society: RFID Tagging Systems for Tunnels – Mariners Club, TST*

Based in Hong Kong, ADR Partnership Limited is a dynamic practice of construction professionals providing specialist commercial and contractual services to the construction industry.

If you would like to discuss any of the articles published in this *Digest* or your project requirements, please contact James Longbottom, Patrick O'Neill or David Longbottom at ADR Partnership Limited on **(852) 2234 5228** or e-mail us at **info@adrpartnership.com**

ADR | Partnership
Partners in Alternative Dispute Resolution

ADR Partnership Limited
17A Seabright Plaza 9-23 Shell Street North Point Hong Kong
t: (852) 2234 5228 f: (852) 2234 6228
e: info@adrpartnership.com www.adrpartnership.com